Shawn's Launch Service, Inc. *and* Seafarers International Union of North America, Atlantic, Gulf, Lakes and Inland Waters District, AFL-CIO. Case 5-CA-12427

May 12, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS JENKINS AND HUNTER

On September 11, 1981, Administrative Law Judge Bernard Ries issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel and Charging Party filed briefs in response to Respondent's exceptions.[1]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Shawn's Launch Service, Inc., Newport News, Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(b):

"(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act."

[1] Respondent has requested oral argument. This request is hereby denied as the record, exceptions, and brief adequately present the issues and the positions of the parties.

[2] We have modified the Administrative Law Judge's recommended Order to include the traditional narrow remedial order language.

DECISION

STATEMENT OF THE CASE

BERNARD RIES, Administrative Law Judge: This matter, heard in Newport News, Virginia, on April 14-15, 1981, presents the question of whether Respondent, in violation of Section 8(a)(5) of the Act, has refused since on or about June 18, 1980, to execute in writing a collective-bargaining agreement containing terms and conditions of employment which were assertedly agreed to with the Charging Party at that time.

Briefs have been received from all parties, and I have considered those briefs, together with the entire record and my recollection of the witnesses, in reaching the following findings of fact,[1] conclusions of law,[2] and recommendations.

Respondent is engaged in the operation of ship-to-shore launches in the Tidewater Virginia area. The Company is owned by 38 tugboat pilots who have selected 5 from their ranks to serve as "managing partners," the functional equivalent of a board of directors. In a 1979 election, Respondent's 14 employees, who operate the launches, selected the Union to represent them for purposes of collective bargaining, and bargaining formally got under way on February 5, 1980.

Representing the Union at the seven negotiating sessions which took place (although none attended all the meetings) were Steve Papuchis, a union official known as a port agent; his subordinates, Richard Avery, Sr., and David Jones; and, in early sessions, three of the unit employees. The chief spokesman for Respondent was Richard L. Counselman, one of the managing partners; also present at various bargaining meetings, at one time or another, were the rest of the managing partners.

The record leaves no doubt that, by April 22, the negotiators had resolved all differences between them. At the meeting on that date, attended by four of the five managing partners, the matters remaining in issue were disposed of, the parties shook hands, and, in words acceptable to Counselman at the hearing, he "felt [he] had an agreement." Union Representative Avery said that he would prepare the contract and submit it to Counselman. The agreement was to take effect on June 1.

Avery did so, getting the draft to Counselman some 10-12 days later. Counselman gave copies of the draft to the other managing partners, and they thereafter held a meeting on May 5 at which, having reviewed their notes, they discussed the fidelity of the draft to the terms negotiated. Counselman testified that they discovered 13 errors in the proposed contract.[3]

Counselman notified Papuchis and Avery of the discrepancies, and the three men met soon thereafter to discuss them. The union representatives agreed with Counselman about each error discovered by the partners, and Avery was instructed to prepare a corrected copy, making the necessary emendations.[4] Avery did so, bound the documents with hard covers, had Papuchis affix his signatures to the copies, and then sent several copies to Counselman's office. Attached to these contracts (which

[1] Certain errors in the transcript are hereby noted and corrected.

[2] The record establishes, and I find, that it is appropriate for the Board to assert jurisdiction here, and that the Charging Party is a labor organization within the meaning of the Act.

[3] Avery testified to seven such inadvertences, and the documents in evidence seem to support his account, although the point is not material.

[4] Avery testified that one of the provisions which were added, a minor item dealing with notice of vacations by employees, had not previously been negotiated. Papuchis subsequently testified that Avery was simply wrong on this score, and I infer from Counselman's silence at the hearing about this matter that he agreed with Papuchis. I conclude that the provision was not a new matter.

consisted of three basic documents—an agreement and two appendixes—each with signature pages) was, for the first time, an eight-page printed document entitled "Licensed Shipping Rules," which prescribes the rules applicable to "[e]very tugboatman, bargeman and dredgeman seeking employment through the hiring halls of" the Seafarers International Union. Respondent never thereafter executed the agreement.

It is appropriate to consider at this point the first of four issues raised by Respondent's brief to explain and justify its failure to embody in writing terms and conditions as to which, Respondent concedes, "the parties reached some form of 'agreement' or understanding at the meeting of April 22, 1980." The initial contention is that there is no "final and legally binding agreement between the parties when, following such agreement, the purported written representation thereof contains both discrepancies and also provisions which were neither negotiated nor contemplated in their verbal agreement."

With regard to the discrepancies in the first draft of the contract, there can be no question that they were merely inadvertent errors in transcription by the Union and in no wise indicated that the minds of the parties had not met. While it is, of course, true that, as Respondent argues, an employer is not obligated to execute a contract which does not mirror the agreements reached, that problem was obviated once the Union willingly made the corrections sought and prepared a fresh copy.[5] *Reppel Steel & Supply Co., Inc.*, 239 NLRB 358, 362 (1978).

As to the Union's inclusion of the "Licensed Shipping Rules" in the final package, the record contains no testimony as to why Avery decided to append this document. The record is also devoid of any indication that the rules were intended by the Union, or thought by Respondent, to be part of the agreement. The rules set out the Union's internal hiring hall procedures and do not appear to impose any obligations on Respondent. Since they pertain only to "tugboatmen, bargemen and dredgemen," they are probably inapplicable to the launch operators involved here. Unlike the other parts of the agreement, the rules have no signature page, and they are not incorporated by reference or otherwise alluded to in the three negotiated parts. It seems obvious that the inclusion of the rules in the binder were not intended to subject Respondent to any obligations not theretofore assumed by it; that if Respondent's agents had even considered their effect, they would have known as much[6]; and that the rules were a simple superfluity, of no consequence here.

After Avery submitted the corrected copies to Respondent, presumably about the middle of May, Counselman let them sit in his office because, he testified, his fellow managing partners were busy. The precise sequence of events thereafter is not clear on this record; it is evident, however, that it soon became apparent to Counselman that some of the employees were displeased with the agreement and desired a chance to vote on it, and that Counselman had discussions with Papuchis on the subject of that unhappiness. Some background seems useful here.

Although, according to Papuchis, the Union routinely submits 90 percent of its negotiated contracts to the bargaining unit employees for ratification, the subject of ratification was never discussed with Respondent at the bargaining table.[7] The only time that the issue surfaced between Respondent and the Union was, according to Counselman, at the February 5 meeting, after a caucus, when Avery returned to the table and handed to Counselman a slip of paper which set out five proposed contract clauses, one of them reading:

> Ratification:
>
> > This Agreement Will Not Be Binding And Will Be Of No Fffect Until Ratified, By The Majority Of The Employees In The Bargaining Unit After Ten Days Written Notice To All Employees Of A Ratification Vote.

Avery testified that he did not give the slip to Counselman and had never seen it until 2 days before the hearing. Avery was an impressive witness, and I think it quite possible that Counselman (and also managing partner Frederick W. Hope, Jr.) erred in naming Avery as its source; the Union had already submitted a comprehensive set of proposals to Respondent, more elaborately covering, or deliberately failing to cover, the subject area of the other four items on the slip, and I do not think it likely that Avery would have handed Counselman a slip of paper with additional, duplicative, or contrary proposals. More probably, one of the employees on the negotiating committee did so.[8]

In any event, the parties never discussed the slip of paper, and, at the hearing, Counselman characterized the ratification provision shown on it as "insignificant," "simply a matter between the Union and the men and had nothing to do with the company." Thereafter, during the course of negotiations, the topic of ratification was never touched on.[9]

The evidence further discloses little or no discussion, before and during the negotiations, between the Union and the employees on the subject of ratification. Employee Kenneth Cooper, who was charged prior to the negotiations with speaking to the other employees about desired contract proposals, and who talked to about seven of them for this purpose, said that the issue of ratification

[5] It is equally true that an employer may not lawfully seize upon some inadvertence in a union-prepared contract and adamantly reject the whole bargaining process because of the existence of that error.

[6] The record shows that most of the managing partners never even looked at the final document.

[7] Prior to the negotiations, Counselman had asked Avery during a phone conversation whether the contract would be ratified, and Avery had said, as he conceded, "Sometimes we do and sometimes we don't."

[8] That there was some confusion in Respondent's testimony on this subject is indicated by the statement of Respondent's operations manager, Ronald Warren, contrary to Counselman's, that the piece of paper was handed out to everybody in the room.

[9] The only witness to testify to the contrary was Managing Partner Lorenzo Amory, who recalled a meeting at which he had stated that the employees would never ratify a certain provision and was told by a union representative, "Don't you worry about getting the contract ratified, we'll do that. If we can reach this agreement, you let us worry about getting the contract ratified." Amory appeared to be telling the truth about this passing exchange, and I accept his testimony on the point. I do not, however, find it to be significant.

had not been raised by them. The only testimony indicating that the subject had been broached, prior to April 22, between the employees and the Union, came from employee David Harrington, a member of the Union's negotiating committee. Harrington testified that, in the course of a bargaining session, either "Danny or Kenny[10] asked some unknown union representatives to give the employees a right to ratify, and the union agents agreed to the request. While Harrington's testimony on the subject was extremely hazy and somewhat inconsistent, I had the impression that he was speaking the truth in saying that the subject was discussed with a Union representative or representatives (aside from Avery and Papuchis, a union agent identified as David (Scrapiron) Jones attended some of the negotiations). I do not believe, however, that a promise made by a union agent to a unit employee, in the presence of perhaps one or two other employees, can be thought to give rise to a legal obligation on the part of the Union to submit a proposed contract to ratificafion.[11]

It was after the parties had reached agreement and the Union had furnished its corrected contract copies to Respondent that the issue of ratification seemed to become somewhat prominent. Papuchis testified that, around May 31, three or four employees came to his office, showed him (for the first time) the piece of paper which had been handed to Counselman on February 5, and asked for the right to ratify.[12] Hearing that the employees wanted to see him again, Papuchis met with "a few of the men" on June 4. At that time, they "reaffirmed that they wanted that ratification clause in the contract," and also stated that they wanted "more money the second and third year." According to Avery and Papuchis, the employees were told that "we already had an agreement with the company, but we would go and try and see if the company would give them any more money."

Thereafter, Papuchis and Avery met with Counselman. The date, or dates, are uncertain: Counselman testified that they met sometime before June 10 and again on June 21; the union representatives referred to only a June 18 meeting. Counselman testified that, at the meeting prior to June 10, Papuchis said that he "needed more money" for the employees; Counselman "assume[d]" from this statement that Papuchis was no longer authorized to sign the agreement, because he believed that employee ratification was necessary, and he thereafter met with the other managing partners on June 10, as he had promised Papuchis, assertedly to see if they would "open up to the new contract with new demands [sic]."

Counselman and Managing Partner Hope gave some interesting testimony as to why the managing partners, on June 10, refused to consider making a more generous offer. Counselman, who apparently knew of the May 31 and June 4 meetings between Papuchis and the employees, and who conceded that he had received a call from an employee around the first of June asking that Respondent hold up on the agreement because the employees "had either obtained an attorney or were going to get an attorney to file for decertification," expressed the following attitude of the managing partners on June 10: "All right, at this point if you were a managing partner, I don't believe you would bend over backwards at that time. After two years, it appears that maybe, maybe the union isn't as strong as they thought."[13] Hope gave a different explanation of the decision of the partners not to offer more money: "We felt that we had reached a bargaining agreement which we had not gone over the contract and that there was no reason for us to . . . . What was in that contract was what we had agreed upon verbally, then we felt that that was what was agreed upon. Thus, despite Hope's testimony that the partners were told by Counselman that "the employees refused to accept the contract," he also said that the partners intended to hold the Union to the contract and not engage in any further bargaining; this seems a clear indication that the partners did not perceive ratification as legally significant, since a failure to ratify, where ratification is required, should logically lead to renewed bargaining, with the tentatively "agreed upon" contract becoming void.

At the "June 18" meeting, according to Avery, he and Papuchis met with Counselman at the union hall and asked for additional wages and perhaps other financial improvements; Counselman said that the board would not be agreeable to changing the terms. Papuchis' version of this meeting was that, when Counselman came to the hall on June 18, Counselman began the conversation by saying that he could not sign the contract until it was ratified by the employees; although Papuchis was at first sure that he himself did not also mention that Respondent consider sweetening the contract, he was prompted to say, after being referred to Avery's testimony, that he believed he said to Counselman that the men would like improved benefits, but that he had told them that he had "already made an agreement with the Company and I'm going to live up to it."[14] Papuchis also testified that, on the day in May when they had met with Counselman to correct the first draft of the contract the latter had asked if Papuchis were authorized to sign the contract or if it had to be ratified, and Papuchis had said that he could sign; Counselman testified that this exchange had occurred at their first meeting in June, and that he had expressed "surprise" upon receipt of this information.

Respondent's second contention, based on its theory of this or these encounters is that, once the Union had been informed by the employees of their unhappiness with the contract and desire for greater benefits, "representatives of the Union effectively withdrew this [original] offer from any further consideration by attempting—after their

[10] "Kenny" would be Kenneth Cooper; "Danny" is employee representative Larry Willard, referred to also at the hearing as "Danny Willard."

[11] The Union's constitution does not require employee ratification of contracts.

[12] Papuchis, presumably angry because of the fact that, on May 31, Respondent had not yet signed the agreement which was scheduled to take effect the following day, tore up the paper and said that he was "not opening up negotiations."

[13] Counselman subsequently amended his reference to "one year"; the election had been held on March 23, 1979.

[14] Papuchis also appeared to testify that he had earlier, between the two employee meetings, called Counselman to see if Respondent could fatten the agreement.

meeting with the employees—to renegotiate the terms thereof . . . before the employer could be reasonably expected to act." Respondent cites "fundamental contract law that the making of such an offer revokes a former offer when the former offer has not yet been accepted."

That tenet of contract law, however, has been deemed by the Board inapplicable to collective-bargaining situations. In *Pepsi-Cola Bottling Company of Mason City, Iowa*, 251 NLRB 187 (1980), the Board held that, even where the company's proposal had been rejected by the union membership and the union thereafter made a counterproposal, the company's original offer remained capable of acceptance by the union "unless expressly withdrawn prior to such acceptance, or defeased by an event upon which the offer was expressly made contingent at a time prior to acceptance."[15] Thus, even if it were true that the negotiated terms constituted only an "offer," and that the Union, by inquiring whether Respondent could make an additional undefined amount of money available, was making a "counterproposal," the counterproposal would not amount to a rejection of the original "offer," which was never withdrawn.

It should be pointed out, in any event, that the negotiated terms were not simply an "offer" by the Union as of early June. Respondent's brief contends that even as of the time that the Union submitted the corrected contract to Respondent in mid-May, "[m]anagement had a right to read, review and sign the contract," and seems to further argue that, until the partners had done so, no agreement had been consummated. In *N.L.R.B.* v. *Donkin's Inn, Inc.*, 532 F.2d 138, 141 (9th Cir. 1976), the court said, "In the context of labor disputes, and particularly Section 8(a)(5) violations, however, the technical question of whether a contract was accepted in the traditional sense is perhaps less vital than it otherwise would be. Rather, a more crucial inquiry is whether the two sides have reached an 'agreement' even though that 'agreement' might fall short of the technical requirements of an accepted contract."

The Board holds that "when an agent is appointed to negotiate a collective-bargaining agreement, that agent is deemed to have apparent authority to bind his principal in the absence of clear notice to the contrary." *University of Bridgeport*, 229 NLRB 1074 (1977). While Counselman testified that there were no "ground rules" leading the Union to believe that the managing partners had to approve the agreement, and hence no formal "clear notice,"[16] Avery testified to his opinion that the "standard procedure" was that the managing directors had to approve the negotiated terms. But the fact is that no less than three and as many as all five of the managing partners attended the last five bargaining sessions, with four of them at the final meeting on April 22. Hope also testified that every subject of negotiation had been decided unanimously by all five partners. It is quite apparent that, on April 22, "agreement" had been reached, as the *Donkin's Inn* court uses that term, and that the unquestioned right of Respondent to examine the corrected contract for additional errors did not render that agreement conditional.[17]

It seems plain that, at some point in June, Papuchis did tell Counselman that the employees desired more money, and asked that he inquire of the other partners about this possibility.[18] As indicated, Respondent characterizes this request as a counteroffer which effectively revoked the Union's prior submission. Even if such a legal construction were not in conflict with Board law, as explained above, the factual inference would, in these circumstances, be inappropriate. I am convinced that the Union made clear to Counselman that, in the event no further benefits could be obtained, the Union was insisting that the negotiated agreement be executed.[19]

Thus, Counselman conceded that at the "June 4" meeting at which the Union had asked about the possibility of more money, he had asked Avery if he "could get this ratified" and Avery replied that "it did not have to be ratified." The obvious context is that Counselman was asking what would happen if Respondent did not produce extra benefits, i.e., whether "this" present contract could be nonetheless sold to the employees, and Avery was saying that if it came to that, the union representatives could themselves (as Papuchis already had) sign the agreement.[20]

The point was reaffirmed subsequently on June 21, when, as Counselman conceded, Papuchis threatened that if "the contract was not signed by the year end because the men had already applied for decertification, that he would file an unfair labor practice and could delay the contract some two years."[21] On further examination, Counselman said he "[thought] that he wanted me to sign the contract with additional money and with sick time," even though the Union had made no further specific demands. It seems most likely that Papuchis'

[15] It has been said that there is a difference between "good technical contract law" and "good collective bargaining law." *Lozano Enterprises* v. *N.L.R.B.*, 327 F.2d 814, 818 (9th Cir. 1964). See also *Transportation-Communication Employees Union* v. *Union Pacific Railroad Co.*, 385 U.S. 157, 160–161 (1966). ("A collective bargaining agreement is not an ordinary contract for the purchase of goods and services, nor is it governed by the same old common-law concepts which control such private contracts.")

[16] Counselman was subsequently contradicted by Respondent's witness Hope, who said that the Union was told at a session that anything agreed upon at the table had to "go back to all the managing partners to be reviewed in order for it to be sold."

[17] I do not credit the testimony of Hope that Respondent's policy is that decisions by the managers had to be "unanimous, all five," a policy later amended by him to apply only to decisions of "any importance." Counselman contrarily testified that the managers voted on a majority-rule basis, and I do not see how a business could operate otherwise. In any event, all five managing partners clearly concurred in the terms of the agreement when they met on May 5 and pooled the errors they had found in the first draft.

[18] Although the point seems immaterial, I do think that, as Papuchis testified, Counselman told him in June that Respondent could not accept the contract unless it was ratified.

[19] Avery, who referred to the meeting with Counselman as a "negotiations" meeting, did not testify that anything was said about insisting that Respondent sign the contract. He said, however, that he was so "disgusted" with the whole affair that he did not pay much attention at the meeting, and Papuchis "did the talking."

[20] Papuchis testified that he told Counselman at their June meeting that if he (Counselman) signed the contract, it "would be in effect."

[21] Papuchis testified that at their June meeting, after Counselman said that he would not sign without ratification and Papuchis replied that "We should have had a contract signed and we agreed on it," Counselman asked if Papuchis were going to file a charge, and Papuchis said that he intended to.

threat to file a charge related, as Counselman quite probably understood, to Respondent's failure to sign the existing agreement. Such a notion, if ambiguous before then, should have been clarified in early July when Papuchis threatened Counselman with a strike vote and said that he would "take the contract if he'd sign it right now before the meeting," and again on July 23 when the Union filed the charge underlying the present proceeding.

I conclude, therefore, as to the issues thus far discussed, that, by asking Respondent for additional benefits in June, the Union did not unilaterally disassociate itself from the contract already binding upon Respondent as of April 22, and in fact reaffirmed to Respondent that it continued to desire execution of the contract if no further benefits were forthcoming.[22]

Although I have referred above to the agreement being "binding upon the Respondent as of April 22," Respondent takes issue, in its final contention, with that assertion, propounding an argument based on the failure of the Union to have the agreement successfully ratified by the employees. That argument is that "Papuchis' authority was limited and that in fact he had signed a contract which he had no authority to sign." Respondent otherwise makes it clear that it does not claim that the Union had reached a separate agreement with Respondent that the contract should be submitted to the employees for approval, a claim neither easily proved, *C & W Lektra Bat Co.*, 209 NLRB 1038 (1974), enfd. 513 F.2d 200 (6th Cir. 1975), nor established by the evidence here. The assertion is simply that "Papuchis' authority was limited" by the requirement of ratification, a limitation "known" to Respondent, and that Respondent was therefore justified in refusing to sign.

As earlier stated, however, the record does not contain evidence of any obligation on the part of the Union, much less any obligation known to Respondent, which might support the thesis. The most substantial evidence on this point is employee Harrington's testimony that unspecified union representatives assured him and perhaps one or two other employees at a bargaining meeting that the employees would have an opportunity to vote on the agreement. Whether or not this assurance gave rise to some sort of moral obligation, it certainly did not mean that the Union, operating under organic law which does not mandate ratification, was thereafter legally constrained to afford the employees an opportunity to vote on the contract. In the absence of some explicit limitation on the bargaining authority of a union, it is, "by virtue of its certification as exclusive bargaining agent . . . empowered by its members to make agreements on behalf of the employees it represent[s] without securing the approval of those employees." *Houchens Market of Elizabethtown, Inc.* v. *N.L.R.B.*, 375 F.2d 208, 212 (5th Cir. 1967).

The formal analysis thus far set out may obscure the basic dynamics which the testimony makes clear. Counselman, *et al.*, and perhaps some or all of the employees, very likely assumed, without being told, and without considering the matter significant, that employee ratification would play a part in the process, although most of them cannot blame the Union for that assumption. The partners would have been perfectly (well, reasonably) satisfied, as of early May, to sign on the dotted line, whether or not the contract was submitted to ratification—until they heard that the employees were displeased with the agreement and that a decertification movement had begun. At that point, the partners saw themselves ensconced in the catbird seat. They could insist on the negotiated terms ("What was in the contract was what we had agreed upon verbally, then we felt that that was what was agreed upon"—Hood) and not "bend over backwards" ("[I]t appears that maybe, maybe the union isn't as strong as they thought"—Counselman) and thus fuel the perceived dissatisfaction while awaiting the results of the decertification petition.[23]

I believed Counselman's stated concern about the "unhappiness" of Respondent's employees, but I also think that the managing partners were playing upon that unhappiness in order to foster the decertification.[24] As the partners must have realized, that unhappiness could only be allayed in the future if, after decertification, Respondent then conferred upon the employees the benefits they now thought they were entitled to. But rather than make those benefits presently available and thus achieve instant happiness, Respondent sat tight, hoping that the decertification petition would work in Respondent's favor. The legal arguments came later.

On the foregoing considerations, I conclude that Respondent violated Section 8(a)(5) and (1) on and after May 15, 1980, by refusing to execute the negotiated agreement.[25]

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

[22] I find the cases cited by Respondent on this issue to be inapposite or distinguishable. I note, moreover, that, even if one were to conclude that no binding contract was reached on April 22, it could be argued, under the theory of *Pepsi-Cola Bottling Company of Mason City, Iowa, supra*, that Respondent's final agreement to terms on April 22 remained outstanding as an "offer" and was effectively accepted at the very least on July 23, when the Union's charge was filed. Clearly, according to Partner Hope, the terms had not been withdrawn as of early June or thereafter—"what was in that contract was what we had agreed upon verbally," and the partners saw "no reason for us" to change it.

[23] The Union had been certified on July 23, 1979, but Counselman testified to an understanding on his part that the certification year expired in March 1980, 1 year after the election, when the "right for people to decertify" arose.

[24] I suspect that Counselman himself may be excepted from this conclusion. My impression was that he personally would have been willing to sign the agreement, or even a better one, but could not convince his partners to do so.

[25] The complaint alleges that the parties reached a "final and binding" agreement "on or about June 18, 1980," and that Respondent has violated the Act since that time by refusing to execute the contract. The date indicated is inconsistent with the facts, the law, and, as well, with the General Counsel's brief, which argues, *inter alia*, that "the parties reached complete agreement on April 22." It seems appropriate to date the commission of the unfair labor practice alleged—could reasonably have been expected to execute it. I calculate that date as being on or about May 15.

3. By on or about May 15, 1980, refusing to execute and honor a written agreement embodying terms and conditions of employment agreed to with the Union on April 22, 1980, Respondent violated Section 8(a)(5) and (1) of the Act.

4. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act, I shall recommend that it be ordered to cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent, on or about May 15, 1980, repudiated and, since on or about that date, has refused to execute the contract which was agreed upon by Respondent and the Union on April 22, 1980, I shall recommend that Respondent be required to execute that agreement forthwith and to give effect to all terms and provisions of that agreement retroactively to June 1, 1980.[26] The loss of earnings and benefits, if any, under the Order recommended herein shall be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), plus interest as set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977).[27]

Finally, I shall recommend that, upon request, Respondent bargain with the Union as the exclusive representative of the employees in the appropriate unit, and that Respondent be required to post the customary notices.

Upon the foregoing findings of fact and conclusions of law, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[28]

The Respondent, Shawn's Launch Service, Inc., Norfolk, Virginia, shall:

1. Cease and desist from:

(a) Failing to bargain in good faith by refusing to execute and honor collective-bargaining agreements concluded by it with Seafarers International Union of North America, Atlantic, Gulf, Lakes and Inland Waters District, AFL-CIO (the Union), or any other labor organization.

(b) In any like manner coercing, restraining, or interfering with the rights accorded employees by Section 7 of the Act.

2. Take the following action which is deemed necessary to effectuate the policies of the Act:

(a) Forthwith execute the collective-bargaining agreement consummated by Respondent and the Union on April 22, 1980, with respect to the following bargaining unit:

> All launch operators employed by Respondent at its Newport News, Hampton Roads, and Norfolk, Virginia, locations but excluding office clerical employees, salesmen, professional employees, guards, and supervisors as defined in the Act.

(b) Upon execution of the aforesaid agreement, give retroactive effect to the provisions thereof and, in the manner set forth in the section herein entitled "The Remedy," make whole the employees, with interest, for any loss they may have suffered by reason of Respondent's failure to sign and effectuate all terms of the agreement.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay and other benefits due under the terms of this recommended Order.

(d) Post at its facilities in Newport News, Hampton Roads, and Norfolk, Virginia, copies of the attached notice marked "Appendix."[29] Copies of said notice, on forms obtained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 5, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[26] The contract was to take effect on this date.

[27] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[28] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[29] In this event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing in which all sides were represented by their attorneys and presented evidence, it has been found that we have violated the National Labor Relations Act. To correct and remedy the violation, we have been directed to take certain actions and to post this notice.

> WE WILL NOT refuse to embody in a signed agreement any understanding reached with the Union or any other exclusive representative of employees in an appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment.
>
> WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by the National Labor Relations Act.

WE WILL forthwith sign the collective-bargaining agreement with Seafarers International Union of North America, Atlantic, Gulf, Lakes and Inland Waters District, AFL-CIO (the Union), which was agreed upon on April 22, 1980, and which covers our employees in the following appropriate unit:

> All launch operators at our Newport News, Hampton Roads, and Norfolk, Virginia, locations, but excluding office clerical employees, salesmen, professional employees, guards, and supervisors as defined in the Act.

WE WILL give retroactive effect to the terms and provisions of the collective-bargaining agreement referred to above, as required by the Board.

WE WILL make whole, with interest, our employees in the bargaining unit described above for any loss of wages and other benefits they may have suffered by reason of our failure to sign and effectuate all terms of the above agreement.

SHAWN'S LAUNCH SERVICE, INC.